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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,250	09/17/2003	Kellene O'Leary	PET-107J	3737
7590	09/15/2005		EXAMINER	
Iandiorio & Teska 260 Bear Hill Road Waltham, MA 02451-1018			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 09/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/664,250	Applicant(s) O'LEARY ET AL.	
	Examiner David J. Parsley	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-21 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-21 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

*MC*

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 5-10-05 and this action is non-final.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 9, 14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,550,579 to Gibson et al. in view of U.S. Patent No. 5,762,163 to Kain and GB Patent No. 2322897 to Shrimpton.

Referring to claims 1 and 24, Gibson et al. discloses a folding step system comprising, a frame – at 10,12, including a U-shaped angled forward member – at 14 and 24, forming two spaced apart legs – at 24 and a connecting member – see at the upper portions of 14 in figure 2, a U-shaped vertically disposed rearward member – at 16,28, hinged to the forward member – see figures 1-4, and including two spaced apart legs – at 28, connected by a base member – see at the lower portions of legs – 28 in figures 1-2, a connecting rod – at 18 in figure 5, spanning the two

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spaced apart legs of the rearward member and a pair of bracket members – at 114, each hingedly connected directly to each of the steps – see for example figures 1-2, each including an elongated guide channel – see at the upper and lower ends of 114 in figure 1, through which a rod extends – see for example at 114 in figures 1-2, to allow the steps and the rearward frame member to fold proximate the forward frame member – see for example figures 1-2. Gibson et al. does not disclose the angled forward member having a connecting base member connecting the two spaced legs. Kain does disclose the angled forward member – at 24a-24c, has a connecting base member – at 24c, connecting the two spaced legs – at 24a and 24b – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gibson et al. and add the connecting base member of Kain, so as to allow for the device to be securely supported during use. Gibson et al. further does not disclose the connecting rod extends through the elongated guide channels of the bracket members and that each elongated guide channel includes a detent which releasably locks the connecting rod with respect to the bracket members when the steps and the rearward member are unfolded. Shrimpton does disclose the connecting rod – at 17, extends through the elongated guide channels – at the inner edge of 60, of the bracket members – at 60,80, and that each elongated guide channel includes a detent – at 63-67, which releasably locks the connecting rod with respect to the bracket members when the steps and the rearward member are unfolded – see for example figures 1-6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gibson et al. and add the bracket members of Shrimpton, so as to securely hold the step assembly open and closed during use.

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Referring to claim 9, Gibson et al. as modified by Kain and Shrimpton further discloses bushings – see at the upper and lower ends of 114 of Gibson et al. and – at the upper and lower ends of 36 of Kain, between each step and the bracket members – at 114 of Gibson et al. and – at 36 of Kain.

Referring to claim 14, Gibson et al. as modified by Kain and Shrimpton further discloses the majority of the U-shaped vertically disposed rearward frame member is round in cross section – see for example – at 14,28 of Gibson et al. and – at 24a-24c of Kain.

Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. as modified by Kain and Shrimpton as applied to claim 1 above, and further in view of U.S. Patent No. 3,593,821 to Lister.

Referring to claims 2-8, Gibson et al. as modified by Kain and Shrimpton further discloses three steps – at 14,16,18 of Kain. Gibson et al. as modified by Kain and Shrimpton does not disclose the steps are wider than 12-16 inches, deeper than 6-10 inches, having a rise less than 9 inches and having an offset greater than 7 inches. Lister does disclose the steps – at 36,38, are wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset greater than 7 inches – see for example column 1 lines 70-75, column 2 lines 1-18 and column 4 lines 26-46. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gibson et al. as modified by Kain and Shrimpton and add the steps with the dimensions of Lister, so as to allow for the step system to be adjustable for differing heights.

Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. as modified by Kain and Shrimpton as applied to claim 1 above, and further in view of U.S. Patent No. 4,440,264 to Knoke et al.

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Referring to claim 10, Gibson et al. as modified by Kain and Shrimpton does not disclose rubber feet on the bottom of the forward member and the rearward member. Knoke et al. does disclose rubber feet – at 20, on the bottom of the forward member and the rearward member – see for example column 3 lines 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gibson et al. as modified by Kain and Shrimpton and add the rubber feet of Knoke et al., so as to allow for the surface on which the device is used to be protected from damage during use of the device.

Referring to claim 15, Gibson et al. as modified by Kain and Shrimpton does not disclose the hinged connection between the vertically disposed rearward frame member and the angled forward frame member comprises a distal tang extending from each leg of the vertically disposed rearward frame member each received in a slot formed in each leg of the angled forward frame member. Knoke et al. does disclose the hinged connection between the vertically disposed rearward frame member – at 38,40, and the angled forward frame member – at 14-19, comprises a distal tang – at 62,64, extending from each leg of the vertically disposed rearward frame member each received in a slot formed in each leg of the angled forward frame member – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gibson et al. as modified by Kain and Shrimpton and add the hinged connection of Knoke et al., so as to allow for the forward and rearward members to be movably and securely connected to one another.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. as modified by Kain and Shrimpton as applied to claim 1 above, and further in view of U.S. Patent No. 5,577,574 to Joseph. Gibson et al. as modified by Kain and Shrimpton does not disclose

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each step includes a grooved rubber covering. Joseph does disclose each step includes a grooved rubber covering – see for example column 5 lines 53-67. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gibson et al. as modified by Kain and Shrimpton and add the steps with rubber cover of Joseph, so as to provide greater traction to the steps during use.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. as modified by Kain and Shrimpton as applied to claim 1 above. Gibson et al. as modified by Kain and Shrimpton does not disclose the steps are constructed of chrome-plated steel. However, it would have been obvious to one of ordinary skill in the art to take the device of Gibson et al. as modified by Kain and Shrimpton and add the steps made of chrome plated steel, so as to allow for the device to be aesthetically pleasing. Alternatively, an aesthetic design change does not render a claim patentable over the prior art as seen in, *In re Seid*, 161 F.2d 229, 73, USPQ 431 (CCPA 1947) and MPEP section 2144.04.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. as modified by Kain and Shrimpton as applied to claim 1 above, and further in view of U.S. Patent No. 4,485,892 to Maloney et al. Gibson et al. as modified by Kain and Shrimpton does not disclose the angled forward frame is square in cross section. Maloney et al. does disclose the angled forward frame – at 12-16, is square in cross section – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gibson et al. as modified by Kain and Shrimpton and add the frame with square cross section of Maloney et al., so as to allow for the device to be strong and durable for repeated use.

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Claims 16 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kain in view of Lister.

Referring to claim 16, Kain discloses a step system comprising, an angled forward frame portion – at 24a-24c, including two spaced legs – at 24a-24b, having upper and lower ends – see for example figures 1-2, the legs connected by a base member – at 24c, at the lower ends of the spaced legs – see for example figures 1-2, a rearward frame portion – at 22a-22c, hinged to the forward frame portion – see at 28, and a plurality of steps – at 14-18, each hingedly connected to the angled forward frame portion – see at 32 and 36 in figures 1-2. Kain does not disclose the steps are wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset between adjacent steps greater than 7 inches. Lister does disclose the steps – at 36,38, are wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset greater than 7 inches – see for example column 1 lines 70-75, column 2 lines 1-18 and column 4 lines 26-46. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the steps with the dimensions of Lister, so as to allow for the step system to be adjustable for differing heights.

Referring to claim 18, Kain as modified by Lister further discloses the rearward frame portion – at 22a-22c, includes two spaced legs – at 22a-22b – see for example figures 1-2 of Kain.

Referring to claim 19, Kain as modified by Lister further discloses a connecting rod – at 50 or 50', spanning the two spaced legs – see figures 1-2 of Lister.

Claims 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kain as modified by Lister as applied to claim 19 above, and further in view of Shrimpton.

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Referring to claim 20, Kain as modified by Lister does not disclose a pair of bracket members each hingedly connected to the steps and each including an elongated guide channel through which the connecting rod extends to allow the steps and the rearward frame portion to fold proximate the forward frame portion. Shrimpton does disclose a pair of bracket members – at 60,80, each hingedly connected to the steps – at 50,90, and each including an elongated guide channel – see at the inner portion of 60, through which the connecting rod – at 70, extends to allow the steps and the rearward frame portion to fold proximate the forward frame portion – see for example figures 1-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain as modified by Lister and add the bracket members of Shrimpton, so as to securely hold the step assembly open and closed during use.

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kain in view of Lister and Shrimpton.

Referring to claim 21, Kain discloses a step system comprising, an angled forward frame portion – at 24a-24c, including two spaced legs – at 24a-24b, having upper and lower ends – see for example figures 1-2, the legs connected by a base member – at 24c, at the lower ends of the spaced legs – see for example figures 1-2, a rearward frame portion – at 22a-22c, hinged to the forward frame portion – see at 28, and a plurality of steps – at 14-18, each hingedly connected to the angled forward frame portion – see at 32 and 36 in figures 1-2. Kain does not disclose the steps are wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset between adjacent steps greater than 7 inches. Lister does disclose the steps – at 36,38, are wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset greater than 7 inches – see for example column 1 lines 70-75, column 2 lines 1-18 and

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column 4 lines 26-46. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the steps with the dimensions of Lister, so as to allow for the step system to be adjustable for differing heights. Kain as modified by Lister further discloses the rearward frame portion – at 22a-22c, includes two spaced legs – at 22a-22b – see for example figures 1-2 of Kain. Kain as modified by Lister further discloses a connecting rod – at 50 or 50', spanning the two spaced legs – see figures 1-2 of Lister. Kain as modified by Lister does not disclose a pair of bracket members each hingedly connected to the steps and each including an elongated guide channel through which the connecting rod extends to allow the steps and the rearward frame portion to fold proximate the forward frame portion. Shrimpton does disclose a pair of bracket members – at 60,80, each hingedly connected to the steps – at 50,90, and each including an elongated guide channel – see at the inner portion of 60, through which the connecting rod – at 70, extends to allow the steps and the rearward frame portion to fold proximate the forward frame portion – see for example figures 1-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain as modified by Lister and add the bracket members of Shrimpton, so as to securely hold the step assembly open and closed during use.

Referring to claim 23, Kain as modified by Lister and Shrimpton further discloses the rearward frame portion includes a base member – at 22c, connecting the two spaced legs – see for example figures 1-2 of Kain.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kain in view of Lister. Kain discloses a folding step system foldable for storage and transport comprising, a foldable frame – at 10, including a U-shaped angled forward member – at 24a-24c, forming two

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spaced legs – at 24a-24b, and a connecting base member – at 24c therebetween, and a U-shaped vertically disposed rearward member – at 22a-22c, hinged to the forward member – see at 28, and including two spaced apart legs – at 22a-22b, connected by a base member – at 22c, therebetween and three wide steps – at 14-18, hingedly connected to the foldable frame – see at 32 and 36. Kain does not disclose the steps are wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and each adjacent step offset by a distance greater than 7 inches, the top step being at least 24 inches high. Lister does disclose the steps – at 36,38, are wider than 12 inches, deeper than 6 inches, having a rise less than 9 inches and having an offset greater than 7 inches – see for example column 1 lines 70-75, column 2 lines 1-18 and column 4 lines 26-46. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kain and add the steps with the dimensions of Lister, so as to allow for the step system to be adjustable for differing heights.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-16, 18-21 and 23-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

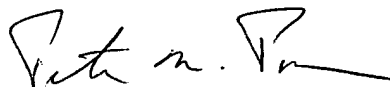
The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
Patent Examiner  
Art Unit 3643



**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

9/9/05